

ASSEMBLY BILL

No. 275

**Introduced by Committee on Environmental Safety and Toxic
Materials (Assembly Members Alejo (Chair), Gonzalez, McCarty,
and Ting)**

February 11, 2015

An act to amend Sections 25360.4, 25363, and 25366.5 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 275, as introduced, Committee on Environmental Safety and Toxic Materials. Hazardous substances: liability recovery actions.

(1) Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, imposes liability for hazardous substances removal or remedial actions and requires the Attorney General to recover from the liable person, as defined, certain costs incurred by the Department of Toxic Substances Control or a California regional water quality control board, upon the request of the department or regional board. The act authorizes, except as specified, a party found liable for any costs or expenditures recoverable under the act to establish, as specified, that only a portion of those costs or expenditures are attributable to the party, and be required to pay only for that portion. If each party does not establish its liability, the act requires the court to apportion those costs or expenditures, as specified, among the defendants and the remaining portion of the judgment is required to be paid from the Toxic Substances Control Account. Existing law authorizes the money deposited in the Toxic Substances Control Account in the General Fund to be appropriated to the Department of Toxic Substances Control for

specified purposes, including the payment of removal and remedial actions incurred by the state.

This bill would delete the requirement that the remaining portion of a judgment for costs and expenditures that is not apportioned among the liable persons be paid from that account.

(2) The act requires an action brought pursuant to it for the recovery of the costs of a removal or remedial action to be commenced within 3 years after completion of the removal or remedial action has been certified by the department.

This bill would, except as provided, instead allow an action to be commenced either within that 3-year period or within 6 years of the initiation of a removal or remedial action, whichever date is later.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25360.4 of the Health and Safety Code
2 is amended to read:

3 25360.4. (a) ~~An~~ (1) *Except as provided in paragraph (2), an*
4 *action under Section 25360 for the recovery of the costs of removal*
5 *or remedial action incurred by the department from the state*
6 *account, or any other source authorized by law, or for the recovery*
7 *of administrative costs incurred by the department in connection*
8 *with any a removal or remedial action performed by the department*
9 *or by any a responsible party, shall be commenced within three*
10 *years after completion of the removal or remedial action has been*
11 *certified by the department. department, or within six years of the*
12 *initiation of a removal or remedial action, whichever date is later.*

13 (2) *No action described in paragraph (1) may be brought that,*
14 *as of December 31, 2015, had not been commenced by the*
15 *department within three years after the certification of the*
16 *completion of the removal or remedial action.*

17 (b) An action under subdivision (c) of Section 25352 for costs
18 incurred by the department for the purposes specified in subdivision
19 (a) or (b) of Section 25352 shall be commenced within three years
20 after certification by the department of the completion of the
21 activities authorized under subdivisions (a) and (b) of Section
22 25352.

(c) In ~~any~~ *an* action described in subdivision (a) or (b) for recovery of the costs of a removal action, a remedial action, administrative costs, or damages, where the court has entered a judgment for these past costs or damages, the court shall also enter an order reserving jurisdiction over the case and the court shall have continuing jurisdiction to determine any future liability and ~~the amount.~~ *amount of the future liability.* The department may immediately enforce the judgment for past costs and damages. The department may apply for a court judgment ~~as to~~ *for* future costs and damages that have been incurred ~~at any time~~ during the removal and remedial actions or during the performance of the activities authorized by Section 25352, but the application shall be made not later than three years after the certification of completion of the actions or activities.

(d) An action may be commenced under Section 25360 or subdivision (c) of Section 25352 at any time prior to expiration of the ~~three-year~~ *applicable* limitation period provided for by this section.

SEC. 2. Section 25363 of the Health and Safety Code is amended to read:

25363. (a) Except as provided in subdivision ~~(f)~~, ~~any~~ *(e)*, a party found liable for ~~any~~ costs or expenditures recoverable under this chapter who establishes by a preponderance of the evidence that only a portion of those costs or expenditures are attributable to that party's actions, shall be required to pay only for that portion.

(b) Except as provided in subdivision ~~(f)~~, *(e)*, if the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures under subdivision (a), the court shall apportion those costs or expenditures, to the extent practicable, according to equitable principles, among the defendants.

~~(c) The state account shall pay any portion of the judgment in excess of the aggregate amount of costs or expenditures apportioned under subdivisions (a) and (b).~~

~~(d)~~

~~(c)~~ The standard of liability for ~~any~~ costs or ~~expenses~~ *expenditures* recoverable pursuant to this chapter is strict liability.

~~(e) Any~~

~~(d)~~ A person who has incurred removal or remedial action costs in accordance with this chapter or the federal act may seek contribution or indemnity from any person who is liable pursuant

1 to this chapter, except that no claim may be asserted against a
2 person whose liability has been determined and which has been
3 or is being, fully discharged pursuant to Section 25356.6, or against
4 a person who is actively participating in a pending apportionment
5 proceeding pursuant to Section 25356.6. *chapter*. An action to
6 enforce a claim may be brought as a cross-complaint by any
7 defendant in an action brought pursuant to Section 25360 or this
8 section, or in a separate action after the person seeking contribution
9 or indemnity has paid removal or remedial action costs in
10 accordance with this chapter or the federal act. ~~Any A~~ plaintiff or
11 *cross-complaint* seeking contribution or indemnity shall give
12 written notice to the director upon filing an action or cross
13 complaint under this section. In resolving claims for contribution
14 or indemnity, the court may allocate costs among liable parties
15 using ~~those~~ *the appropriate* equitable factors which are appropriate.
16 *factors*.

17 (f)

18 (e) Notwithstanding this chapter, ~~any a~~ response action
19 contractor who is found liable for any costs or expenditures
20 recoverable under this chapter and who establishes by a
21 preponderance of the evidence that only a portion of those costs
22 or expenditures are attributable to the response action contractor's
23 ~~actions~~, *actions* shall be required to pay only that portion of the
24 costs or expenditures attributable to the response action contractor's
25 actions.

26 SEC. 3. Section 25366.5 of the Health and Safety Code is
27 amended to read:

28 25366.5. (a) ~~Any A~~ public agency operating a household
29 hazardous waste collection program or ~~any a~~ person operating
30 such a program under a written agreement with a public agency,
31 or, for material received from the public as used oil, ~~any a~~ person
32 operating a certified used oil collection center as provided in
33 Section 48660 of the Public Resources Code, shall not be held
34 liable in ~~any a~~ cost recovery action brought pursuant to Section
35 25360, 25360, including, but not limited to, ~~any an~~ action to
36 recover the fees imposed by Section 25343 or ~~any an~~ action
37 brought pursuant to subdivision (e) (d) of Section 25363, for ~~any~~
38 waste that has been properly handled and transported to an
39 authorized hazardous waste treatment, storage, or disposal facility
40 at a location other than that of the collection program.

1 (b) For purposes of this section, “household hazardous waste
2 collection program” means a program or facility, specified in
3 Section 25218.1, in which hazardous wastes from households and
4 conditionally exempt small quantity generators, are collected and
5 ultimately transferred to an authorized hazardous waste treatment,
6 storage, or disposal facility.

7 (c) Except as provided in subdivision (a), this section does not
8 affect or modify the obligations or liabilities of ~~any~~ a person
9 imposed pursuant to ~~any~~ state or federal law.